IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL REVN.APPLICATION NO.400 OF 2006

Shri Pandurang Rajaram Bamnikar .. ..Applicant

Versus

Shriram Transport Company Ltd. & Anr. ..Respondents

Mr. V.V.Purwant i/b Mr. A.B. Borkar for applicant

Mr.Y.M.Nakhwa, APP for State

CORAM : S.C.DHARMADHIKARI,J.

DATE : 20TH NOVEMBER, 2006

P.C.:

1. In all fairness, Mr. Purwant learned counsel appearing for the applicant states that the applicant could not comply with the condition imposed by this court in its order dated 12.10.2006.

2. This fact being reported by the Office, I had

directed that the matter be placed for admission today.

3. The applicant is the original-Accused in a prosecution under Section 138 of the Negotiable Instruments Act.

4. The applicant was convicted by the trial court and sentenced to suffer simple imprisonment for eight months and to pay fine of Rs.3,000/= and pay compensation of Rs.66,000/=.

5. The applicant has invoked the revisional jurisdiction of this Court after being unsuccessful before the lower appellate court.

6. The only submission raised by the applicant before me is that the hire purchase agreement ought to have been seen by the courts below in its entirety. The applicant was handed over possession of the disputed truck only as an hirer. The ownership remains with the complainant. Unless and until the entire amount is paid the ownership does not get transferred to the applicant. In default of payment, the possession of the truck is taken by the complainant and hence, there is no legally enforceable

debt. Consequently, the applicant could not have been prosecuted under section 138 of the Negotiable Instruments Act.

7. The courts below have considered this aspect of the matter. It is clear from the order passed by the lower appellate court and particularly para 9 thereof, that hire purchase agreement (Ex.33) was perused. The judgment of the Kerala High Court was also referred to. However, the court below has observed that the said ruling would not apply because the breach of the agreement could not be proved. The applicant could not prove that an amount of Rs.37,000/= has been paid. The court below has therefore, observed that the cheque was issued as a consideration under the agreement. The truck was in possession of the applicant till the month of September, 2003. The cheque is dated 18.9.2003. The payment under the agreement was to be made till 28.9.2003. There is no evidence to show that the applicant paid the instalments upto 28.9.2003.

8. In the above circumstances, there is no merit in the contention of the applicant that the cheque is not issued for any legally enforceable debt. The view taken

by the courts below is based upon perusal of the materials placed before them and consistent with the same. In revisional jurisdiction, it is not permissible for me to reappreciate and reappraise the same. In the above circumstances, there is no merit in the criminal revision application which is accordingly dismissed. The ad-interim order to stand vacated forthwith.

(S.C.Dharmadhikari, J.)